

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARSHAWN MUNGRO #10-B-3608

PLAINTIFF,

-v-

NOTICE OF MOTION
PURSUANT TO
42 U.S.C. §1983

13 CIV 1059 JM

NURSE ADMINISTRATOR,
ERIE COUNTY HOLDING CENTER,

DEFENDANT.

I, MARSHAWN MUNGRO #10-B-3608, am the Plaintiff in the above captioned proceeding.

2). I am currently housed in Wyoming Correctional Facility, located at P.O. Box 501, Attica New York 14011-0501.

JURISDICTION

3). This action is being brought pursuant to 42 U.S.C. §1983, and the United States District Court of the Western District of New York has Jurisdiction over this action pursuant to 28 U.S.C. §§1331, 1343(3)(4) and 2201.

4). Pursuant to 28 U.S.C. §1391, the Western District of New York is the area in which this action that is being brought took place, and the same area in which the Defendant in this action is located.

PARTIES

5). The Nurse Administrator of Erie County Holding Center is the Defendant named in these proceedings, and the address of this Defendant is at Erie County Holding Center located at 40 Delaware Avenue, Buffalo New York 14202.

6). The Plaintiff, under penalty of perjury declares that, there are no proceedings in any State or Federal Court regarding the Constitutional violations brought forth in this action.

STATEMENT OF CLAIM

7). This is a United States Constitutional 14th Amendment violation of Due Process, being a pre-trial detainee at Erie County Holding Center and having one day out of the blue waking up with my upper body and legs being affected by a rash. As this rash seemed to get worse as time went on, I was denied the right to "reasonable" and adequate medical care which is guaranteed by the Due Process Clause of the United States Constitutional 14th Amendment.

8). This denial of "reasonable" medical care in the face of the plaintiff sustaining a "serious" skin condition ignored by, and the non diagnosis of this condition, led to the point of this rash growing worse through the dispensing of wrong medications (on numerous occasions), clearly uncovering the plaintiff from the protection of the Eighth Amendment's guarantee against Cruel and Unusual Punishment through the Deliberate Indifference towards the medical needs of the plaintiff, and while being solely responsible for the providing of

reasonable medical care acting under color of State law, having the duty of care to the plaintiff, and through the negligence of the medical department's breaching of that duty, the plaintiff now has to live with a deformity that has affected the plaintiff's quality of life.

9). Once the plaintiff started complaining of this rash, the proper protocol should have been followed to ascertain what this rash was; what was the cause of this rash; and what would be the best course of action to medically treat this rash. Instead of an intelligent decision being made the plaintiff was given Antifungal Foot Creme to treat this rash on my upper body and legs. Totally relying on the expertise of the medical staff, the plaintiff followed instructions and the plaintiff's entire body (where the rash was present) became inflamed.

10). This rash had gotten so bad that it started discharging an orange pus that had a very horrendous odor, and in order for the plaintiff to take off a t-shirt, the plaintiff would literally have to peel it off, because it would be stuck to the plaintiff's body. It had gotten so bad that because the plaintiff went on visits regularly, the Erie County Holding Center had gone against their policy(s) to allow the plaintiff to take extra t-shirts on the visit(s) (to be able to change throughout the visit(s)), and would also allow the plaintiff to receive anti-bacterial soap(s) and lotions from my family in visit brought packages (something done for no other detainee).

11). The plaintiff names the Nurse Administrator of Erie County Holding Center as the Defendant because in this official capacity it is her/his duty

to assure that all of the pre-trial detainees at the Erie County Holding Center will receive adequate and "reasonable" medical care according to it's populations needs. It is also the duty of the Nurse Administrator in this official capacity, acting under color of state law, to closely supervise the work of her/his subordinates (the medical staff at Erie County Holding Center), and to not take seriously the medical needs of the plaintiff caused the plaintiff's skin condition to escalate and worsen from a simple rash to a more "serious" skin condition and the negligence toward this "serious" condition deprived the plaintiff of the minimal civilized measure of life's necessities. In realizing that the Nurse Administrator in her/his official capacity is charged with the duty of managing her/his staff members, actually knew about the plaintiff's condition, and/or in her/his official capacity should have known of the plaintiff's condition because the plaintiff's condition was not a single isolated incident, but a pattern of ongoing complaints by the plaintiff, that was ignored on a constant basis, and in being constantly ignored, the Erie County Holding Center's Nurse Administrator acted with gross negligence in managing her/his subordinates.

12). During the times that the Erie County Holding Center's medical department decided to do something, the proper diagnosis was never made of the what the plaintiff's condition was, and it was this negligent non diagnosis that set the platform for the plaintiff to be given the wrong medication after being sent to the Erie County Medical Center. The plaintiff was even informed by the nurse back at the Erie County Holding Center that the plaintiff should not have been given the medication that the plaintiff was prescribed by Erie

County Medical Center. The plaintiff, in no way, form or fashion holds the Erie County Medical Center liable for prescribing the wrong medication to the plaintiff because Erie County Medical Center acted only on the misinformation furnished to them from the Erie County Holding Center's medical department that accompanied the plaintiff when the plaintiff was taken to the Erie County Medical Center.

13). Thus, the plaintiff spells out the ongoing complaints as follows:

- a) On or around the beginning of June 2010, I started experiencing a rash that spread all over my upper body and leg area. After two attempts at trying to be seen at sick call, I filed another sick call request on 6/7/10 pertaining to this rash. On or around the 10th of June, I was seen by the medical staff, and given Tolnaftate (an antifungal creme used to treat athlete's feet), that had done nothing but cause inflammation on my entire upper body and leg area, and I in turn filed another sick call request on 6/16/10. (Exhibit One)
- b) Not being seen by the medical staff I filed another sick call request on 6/18/10 asking to be seen as soon as possible because the rash was continuing to spread over my body. I was seen on or around 6/20/10 and given an antibiotic to try and remove from my system whatever was causing this rash that was now starting to form legions. (Exhibit Two)
- c) On 6/25/10 I filed another sick call slip to be taken to the hospital because the rash was causing constant itching and severe pain. On 7/2/10 I was seen and given a different antibiotic and hydrocortisone creme that had done nothing to stop the spreading of this reah that seemed to be attacking my body viciously. (Exhibit Three)
- d) On 7/11/10 I filed another sick call slip to receive attention as soon as possible, and was not seen. I submitted another sick call slip on 7/13/10 informing the medical department that I'd written seven (7) times within the past ten days (7/2 to 7/13), and my complaints were being ignored, and that the rash was now seriously inflamed and discharging an orange puslike substance that had a horrendous odor. (Exhibit Four)
- e) I was called down to the clinic on 7/14/10 to be treated by the RN for the puslike rash and was given ibuprofen for the pain and was told that I'd be put in to go to the hospital. (Exhibit Five-E.C.H.C. RECORDS)
- f) At this point I was afforded the opportunity of being able to bring extra t-shirts with me on visits to be able to change throughout the course of my visits due to the draining of this orange pus that would get so bad that the t-shirt I initially wore on the visit would be stuck to my upper body. Having to have my family witness my condition

was equally tolling on me because of the emotional trauma they experienced from what I was going through. (Exhibit Six-E.C.H.C. RECORDS)

- g) On 7/15/10, after having experienced so much pain throughout the course of the day and hurting so much, I refused to lock into my cell unless someone did something to help me. (Exhibit Seven-E.C.H.C. RECORDS)
- h) Around 10:30 p.m., on 7/15/10, a Sgt, came to my unit along with five officers in response to me not locking into my cell, and I was asked by this Sgt. what was the reason I was refusing to lock into my cell. I explained to the Sgt. that I was in extreme pain and that I needed emergency assistance. The Sgt. informed me that my family had phoned the facility and that he understood my issue. The Sgt. then instructed me to grab an Erie County Holding Center prison shirt and took me to the clinic, and from the clinic I was then taken to Erie County Medical Center. (Exhibit Eight-E.C.H.C. RECORDS)
- i) While at Erie County Medical Center, gauze pads were placed on the rash, and I was given Prednisone pills, and Benadryl for the constant itching. (Exhibit Nine-E.C.H.C. RECORDS)
- j) After having taken the Prednisone for eight (8) days I filed another sick call slip on 7/23/10 explaining that the Prednisone was not working and that I needed to go back to the hospital immediately. (Exhibit Ten)
- k) Between 7/23/10 and 7/30/10 while being administered my medication (Prednisone), I was asked by this Nurse, "Why are you taking Prednisone?" I informed the Nurse that this medication was prescribed to me by Erie County Medical Center. She then asked me for what? I showed the Nurse my rash and the hard bumps (legions) that were forming and the Nurse stated, "Prednisone is not for that, and they should not have given you Prednisone for that. For one, Prednisone is for elderly people and it makes your bones brittle; for two, it should not be administered to people of color because it causes discoloration to your skin." I was then still not seen from the last sick call slip submitted and then dropped another one on 7/31/10 asking to please have these things that were once a rash and now turning into hard bumps (legions) checked out, and was still not seen. (Exhibit Eleven)
- l) On 8/4/10 I filed another sick call slip explaining that I needed to be seen by a Doctor immediately because these new bumps on my arms and chest and back area were causing me serious discomfort to the point that it was hard for me to sleep, and that I needed assistance immediately. (Exhibit Twelve)
- m) On 8/13/10 I was taken to be seen by the Dermatologist at Roswell Park Cancer Institute who instructed me to take off my shirt. After removing my shirt and the Dermatologist witnessed my upper body leaking from these legions, the Dermatologist started crying and in a loud aggressive tone stated, "Oh my God, why didn't they get you here sooner?" She then prescribed a Topical creme and Cetaphil lotion. (Exhibit Thirteen-E.C.H.C. RECORDS)

- n) On 8/16/10 I submitted another sick call slip because the antibiotics that I was prescribed was doing nothing to assist me in deflating the legions that had formed on my upper body.(Exhibit Fourteen)
- o) On 8/19/10 I submitted another sick call slip because I had not been seen and rashes started forming around all of my shoulder areas and upper back.(Exhibit Fifteen)
- p) On 9/27/10 I submitted another sick call slip because the rashes had started forming around my neck and anything that I put on, made my body burn. I was scheduled to see the Dermatologist again, but was never sent, and not only did I still have these legions (two on my right and left shoulder, and two on my right and left upper back), but rashes were forming around these legions all the way from my chest to my neck.(Exhibit Sixteen)

14). At this point, it had become way too late to correct the negligence done, because the end results of this negligence (wrong medications; i.e., antifungal creme, prednisone, etc.), irregardless to what the plaintiff could be given medically, nothing could reverse the hardened black legions that had become a permanent fixture on the left side of the plaintiff's upper body and back that til this day cause a discomfort for the plaintiff.

15). Based on the above described incidents, and the overall end results of the negligence described, the plaintiff did not grieve or appeal this issue presented.

RELIEF SOUGHT

16). WHEREFORE, in light of the medical negligence described by the plaintiff, along with the non diagnosis of the plaintiff's "serious" skin condition by the medical staff, and the dispensing of wrong medication(s) as a result of this non diagnosis, and the deliberate indifference disregarding of the risk to the plaintiff's health and safety caused by this "serious" skin condition that caused the plaintiff constant pain, suffering and discomfort,

all falling under the umbrella of cruel and unusual punishment that the Eighth Amendment prohibits, including the stress, depression and ongoing psychological [e]ffects of this "serious" skin condition, by the plaintiff having to witness the stress, depression and emotional trauma that the plaintiff's family endured on a constant basis, [a]ffected the plaintiff psychologically and emotionally as well. The plaintiff humbly seeks Compensatory damages in the amount of \$500,000.00 dollars, and Punitive damages in the amount of \$100,000.00 dollars, and whatever further relief that this Honorable Court deems to be just and proper.

17). The plaintiff, MARSHAWN MUNGRO #10-B-3608, declares under penalty of perjury that the foregoing is true and correct.

DATED: ATTICA, NEW YORK

OCTOBER 19, 2012

Marshawn Mungro

Mr. Marshawn Mungro #10-B-3608
Wyoming Correctional Facility
P.O. Box 501
Attica, New York 14011-0501
PLAINTIFF PRO-SE

SWORN TO BEFORE ME THIS

19th DAY OF OCTOBER 2012

KONKLE ANDREW SR.

Notary Public, State of New York

No. 01KO6022397

Commissioned in Erie County

Commission Expires March 29, 2015

NOTARY PUBLIC

**Erie County Correctional Health
SICK CALL REQUEST**

INMATE SECTION: (Inmate to complete only gray section)

Last name: Marshall First name: Marshall ICN 177834

D.O.B. 4/10/81 Sex: M F Location: _____

Date of Request: 6/18/10 Time of Request: _____ AM PM

Reason for Request:

This is my first request to be seen by the doctor.

I am experiencing pain in my right shoulder.

I would like to see a doctor.

NURSING SECTION Evaluated by: _____ RN LPN

Date: _____ Time: _____ AM PM

Disposition: Immediate Evaluation (Medical ER _____ via Ambulance Car)

Sick call on _____ Dental call on _____

Referral to Forensics/Mental Health _____

Treatment per ECDOH/ECSD Nursing Protocol (specify):

Phone Consultation with Physician (Date: _____ Time: _____ AM PM)

PROVIDER SECTION

History: As above Additional Comments:

**Erie County Correctional Health
SICK CALL REQUEST**

INMATE SECTION: (Inmate to complete only gray section)

Last name: Hungo First name: Melvin ICN 77834

D.O.B. 4/10/81 Sex: M F Location: _____

Date of Request: 6/25/10 Time of Request: 10:00 AM PM

Reason for Request:

NURSING SECTION Evaluated by: _____ RN LPN

Date: ____/____/____ Time: _____ AM PM

Disposition: Immediate Evaluation (Medical ER _____ via Ambulance Car)

Sick call on ____/____/____ Dental call on ____/____/____

Referral to Forensics/Mental Health ____/____/____

Treatment per ECDOH/ECSD Nursing Protocol (specify):

Phone Consultation with Physician (Date: ____/____/____ Time: _____ AM PM)

PROVIDER SECTION

History: As above Additional Comments:

**Erie County Correctional Health
SICK CALL REQUEST**

INMATE SECTION: (Inmate to complete only, stay section)

Last name: Mungro

First name: Marshawn ICN 77834

D.O.B. 4/10/81 Sex: M F

Location: _____

Date of Request: 7/13/10

Time of Request: 7:40 AM PM

Reason for Request:

I'm writing because I've written over 7 times in the past 10 days & haven't got a response, I was given medication then I am only to treat my rashes since then they've gotten worse. Starting to pus & are inflamed, I need medical attention. I would like to go to the hospital yesterday!

NURSING SECTION Evaluated by:

Date: 7/14/10 Time: _____ AM PM

Disposition: Immediate Evaluation (Medical ER _____ via _____)

Sick call on 7/14/10 Dental call on 7/14/10

Referral to Forensics/Mental Health 7/14/10

Treatment per ECDOH/ECSD Nursing Protocol (specify):

SEEN on 7/14/10

Phone Consultation with Physician (Date: 7/14/10 Time: _____ AM PM

PROVIDER SECTION

History: As above Additional Comments:

7/14/10 SEE NOTE

**Erie County Correctional Health
SICK CALL REQUEST**

INMATE SECTION: (Inmate to complete only gray section)

Last name: Hicks First name: Mark ICN 77831

D.O.B. 4/10/78 Sex: M F Location: Chronic Care

Date of Request: 7/10/12 Time of Request: 10:30 AM PM

Reason for Request:

I am experiencing chest pain. I need to see a doctor as soon as possible.
I am experiencing chest pain. I need to see a doctor as soon as possible.
I am experiencing chest pain. I need to see a doctor as soon as possible.
I am experiencing chest pain. I need to see a doctor as soon as possible.

NURSING SECTION Evaluated by: _____ RN LPN

Date: ____/____/____ Time: _____ AM PM

Disposition: Immediate Evaluation (Medical ER _____ via Ambulance Car)

Sick call on ____/____/____ Dental call on ____/____/____

Referral to Forensics/Mental Health ____/____/____

Treatment per ECDOH/ECSD Nursing Protocol (specify):

Phone Consultation with Physician (Date: ____/____/____ Time: _____ AM PM)

PROVIDER SECTION

History: As above Additional Comments:

Erie County Correctional Health SICK CALL REQUEST

INMATE SECTION: (Inmate to complete only gray section)

Last name: Mungo First name: Marshall ICN 777834

D.O.B. 4/10/81 Sex: M F Location: Chesapeake, Maryland

Date of Request: 7/31/16 **Time of Request:** 3:00 AM **PM**

Reason for Request:

...was for plain call a short time ago. I think I have it the best because

Digitized by srujanika@gmail.com

For more information, contact the Office of the Vice President for Research and the Office of the Vice President for Student Affairs.

NURSING SECTION Evaluated by: _____ RN LPN

Date: ____/____/____ Time: _____ AM PM

Disposition: Immediate Evaluation (Medical ER _____ via Ambulance Car)

Sick call on _____ Dental call on _____
Referral to Forensics/Mental Health / _____

Referral to Forensics/Mental Health _____ / _____
Treatment per ECDOH/ECSD Nursing Protocol (specify): _____

Treatment per ECDRH/ECSD Nursing Protocol (specify):

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- Treatment per ECDOH/ECSD Nursing Protocol (specify):

Phone Consultation with Physician (Date: ____ / ____ / ____ Time: ____ AM PM

PROVIDER SECTION

History: As above **Additional Comments:**

Erie County Correctional Health SICK CALL REQUEST

INMATE SECTION: (Inmate to complete only gray section)

Last name: Minato First name: Marsha ICN 577831

D.O.B. 4 / 10 / 81 Sex: M F Location: C 24

Date of Request: 8 / 14 / 16 **Time of Request:** 10:00 AM **AM** **PM**

Reason for Request:

Reason for Request:

I'm now trying to go to a outside date immediately. The bumps
on my shoulder that are closing me great pain that I'm always going to
start on how a little ways of with this is very difficult to do. Well
I'm not going to go to a party this year as well!

NURSING SECTION Evaluated by: _____ RN LPN

Date: _____ / _____ / _____ Time: _____ AM _____ PM _____

RN LPN

Disposition: Immediate Evaluation (Medical ER

Disposition: Immediate Evaluation (Medical ER via Ambulance Car)

Sick call on / / Dental call on / /

Referral to Forensics/Mental Health / /

Treatment per ECDOH/ECSD Nursing Protocol (specify):

Block 2: Communication with Stakeholders (Part 1 of 2) | Page 11 of 11 | AM: 11:54 PM: 11:54

PROVIDER SECTION

History: As above **Additional Comments:**

**Erie County Correctional Health
SICK CALL REQUEST**

INMATE SECTION: (Inmate to complete only gray section)

Last name: Mungro First name: Marshall ICN 77831

D.O.B. 4/10/81 Sex: M F Location: Charlie Lang

Date of Request: 8/16/12 Time of Request: 9:40 AM PM

Reason for Request:

*I would like to be seen asap. I'm starting to get more bad
people on my stretch again, the ones that I was recently
given an antibiotic for. So can you please call me down again
before they get beat again. Thank you for advance*

NURSING SECTION Evaluated by: _____ RN LPN

Date: ____/____/____ Time: _____ AM PM

Disposition: Immediate Evaluation (Medical ER _____ via Ambulance Car)
Sick call on ____/____/____ Dental call on ____/____/____

Referral to Forensics/Mental Health ____/____/____

Treatment per ECDOH/ECSD Nursing Protocol (specify):

Phone Consultation with Physician (Date: ____/____/____ Time: _____ AM PM)

PROVIDER SECTION

History: As above Additional Comments:

**Erie County Correctional Health
SICK CALL REQUEST**

INMATE SECTION: (Inmate to complete only gray section)

Last name: Munroe First name: Marshall ICN 777834

D.O.B. 9/10/81 Sex: M F Location: Charlotte

Date of Request: 8/19/10 Time of Request: 7:00 AM PM

Reason for Request:

I need to be seen again, my rashes are starting to come back & I want to stop them before they start spreading again, please call me Saturday, thank you in advance

NURSING SECTION Evaluated by: _____ RN LPN

Date: ____/____/____ Time: _____ AM PM

Disposition: Immediate Evaluation (Medical ER _____ via Ambulance Car)

Sick call on ____/____/____ Dental call on ____/____/____

Referral to Forensics/Mental Health ____/____/____

Treatment per ECDOH/ECSD Nursing Protocol (specify):

Phone Consultation with Physician (Date: ____/____/____ Time: _____ AM PM)

PROVIDER SECTION

History: As above Additional Comments:

